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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,754	12/30/2003	Alexander Gebhart	09700.0038.00000	9080
22852	7590	11/08/2005	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			BUI, BRYAN	
			ART UNIT	PAPER NUMBER
			2863	

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/749,754	<b>Applicant(s)</b> GEBHART, ALEXANDER	
	<b>Examiner</b> Bryan Bui	<b>Art Unit</b> 2863	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 9/28/2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-26 is/are allowed.
- 6) ☒ Claim(s) 1,10-15,17-20,22 and 23 is/are rejected.
- 7) ☒ Claim(s) 2-9,16 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. Applicant's papers filed on 9/28/2005 have been received and considered. Claims 4, 15 have been amended. Claims 1-26 are pending in the application.
2. Applicant's remark has been considered.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 10-14, 15, 17-19, 20, 22-23, are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller et al (U.S. 6,256,740) in view of VanderSpek et al (US 5,440,722).

With respect to claims 1, 15, 17, and 20, Muller et al teaches a plurality of compute nodes in a network maintaining a local store of services (figure 2), the local store of services including at least a service name (column 1, lines 45-49); receiving a request for a service from a client system and indicates the performance of the service for each node in creating a list correspondence in each node (column 6, lines 1-7, column 10, lines 51-67). Muller et al teach each compute node maintain a list that maps fabric virtual disk names to ION (input & output node) and compute nodes use this data to create master table to each virtual disk in the system, and compute nodes create an entry point at boot time and update those entry points from local storage disk using a naming protocol establishing between compute node and IONs (column 40, lines 8-33).

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Thus, Muller et al discloses the functionality defining the compiling a list of compute nodes matching the service request and having the service names ranked by PIT protocol in action (column 29, lines 13+), but does not mention about statistic performance in the compute nodes. VanderSpek et al teach a method and system in network distribution comprises compute nodes & I/O nodes (both included in application node) having local storage for each node (figure 12) with server name provider (figure 9B) corporate with user' request 9, figures 1, 2) that provides a statistical historical information for each compute node from compiling a list of compute nodes matching, and the list having service names ranked (figures 9A to 9G). It would have been obvious to one of ordinary skill in the art to include the teachings of VanderSpek et al to modify Muller et al' technique in order to improve the monitoring in performing corresponding information.

With respect to claims 10-11, Muller et al teaches displaying list and comprising a graphical user interface (column 17, lines 21-37, column 21, line 55 to column 22, line 34).

With respect claims 12-14, 17-19, 22-23, Muller et al teaches the list is ranked according to service instantiation (representation) and according to an average service response time and to the error (column 34, lines 35-67).

***Allowable Subject Matter***

1. Claims 2-9, 16, 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In combination with other limitations, the claims direct to the statistical function and timing to represent the events of services. The prior art does not disclose these limitations.

Claims 24-26 are indicating allowable over the prior art of record because none of the prior art whether taken singularly or in combination to teach the claimed combination as recited, especially in combination with other limitations, requires the statistical functions of the services and updating the statistics in response to the change in the number of the service provided in the claims.

***Response to Arguments***

2. Applicant's arguments with respect to claims 1 and corresponding to elements of claim 10 and 20 have been considered but are moot in view of the new ground(s) of rejection. Muller clearly point out the subject matter of the limitations of the claims invention as mentioned in the previous office action, but applicant response filed on 9/28/2005 does not completely mentioned about these cited columns, and figures related that showed in the office action. Contrary, applicant point out other columns in the reference (noted these columns also represent for other implements/comments that

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reference patent are covered). For example: column 11, line 52 to column 12, line 12 and column 34, line 54 to column 35, line 21, etc; and figures 2, 14. Figure 2 clearly define local storage device 210, and compute nodes 200. Further, during examining the claims must be interpreted as broadly as their terms reasonable allowed. Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claims, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ541, 550-51 (CCPA 1969). For these reasons, the rejections are made as set forth above.

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Bui whose telephone number is 571-272-2271. The examiner can normally be reached on M-Th from 7am-4pm, and Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Barlow can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BB

11/02/2005

BRYAN BUI  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Bryan Bui', is written below the printed name and title.